

25.603 Exceptions.

(a)

(1) When one of the following exceptions applies, the contracting officer may allow the contractor to incorporate foreign manufactured construction materials without regard to the restrictions of section 1605 of the Recovery Act or foreign unmanufactured construction material without regard to the restrictions of the Buy American statute:

(i) *Nonavailability*. The head of the contracting activity may determine that a particular construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at [25.104\(a\)](#) and the procedures at [25.103\(b\)\(1\)](#) also apply if any of those articles are acquired as construction materials.

(ii) *Unreasonable cost*. The contracting officer concludes that the cost of domestic construction material is unreasonable in accordance with [25.605](#).

(iii) *Inconsistent with public interest*. The head of the agency may determine that application of the restrictions of section 1605 of the Recovery Act to a particular manufactured construction material, or the restrictions of the Buy American statute to a particular unmanufactured construction material would be inconsistent with the public interest.

(2) In addition, the head of the agency may determine that application of the Buy American statute to a particular unmanufactured construction material would be impracticable.

(b) *Determinations*. When a determination is made, for any of the reasons stated in this section, that certain foreign construction materials may be used-

(1) The contracting officer shall list the excepted materials in the contract; and

(2) For determinations with regard to the inapplicability of section 1605 of the Recovery Act, unless the construction material has already been determined to be domestically nonavailable (see list at [25.104](#)), the head of the agency shall provide a notice to the Federal Register within three business days after the determination is made, with a copy to the Administrator for Federal Procurement Policy and to the Recovery Accountability and Transparency Board. The notice shall include-

(i) The title "Buy American Exception under the American Recovery and Reinvestment Act of 2009";

(ii) The dollar value and brief description of the project; and

(iii) A detailed justification as to why the restriction is being waived.

(c) *Acquisitions under trade agreements*.

(1) For construction contracts with an estimated acquisition value of \$7,008,000 or more, also see subpart [25.4](#). Offers proposing the use of construction material from a designated country shall receive equal consideration with offers proposing the use of domestic construction material.

(2) For purposes of applying section 1605 of the Recovery Act to evaluation of manufactured construction material, designated countries do not include the Caribbean Basin Countries.

Parent topic: [Subpart 25.6 - American Recovery and Reinvestment Act-Buy American statute-Construction Materials](#)